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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/801,871 | 03/09/2001 | Jesse H. Gaytan | 40700 | 6727 |

1609 7590 05/24/2004

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON,, DC 20036

EXAMINER

LEVY, NEIL S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1616

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/801,871

Applicant(s)

GAYTAN, JESSE H.

Examiner

Neil Levy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 18 and 20-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-15, 18 and 20-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32, 34-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-15, 18, 20-48 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/10/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-15, 18, 20-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

Claim 1 now depends from 32, so if 32 were amended and found allowable, claims 1-15, 18, 20-31 would also be allowable.

Claims 46, 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The water not stated as to what the % basis is –we note that applicant has in all other cases amended to require the cited % as a % of the total composition. Claim 48 has an indefinite range “less than.”

Claims 32, 34, 36-40, 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Kishino et al 4150155.

The rejection of record is maintained.

Claimed is a product, no weight given to process of making-Kishino has it. Claim 42 is not seen as adding patentable subject matter-the composition claimed is of 42, never mind the starting extrusion mass. Likewise in 43, it is unclear where support exists for a lubricious mixture of a solid composition, so the claim is seen as a solid with

lubricant, solvent and acephate as an intermediate, since the components are present their condition as a lubricious mixture must also be the recognized state.

Claims 32, 34-36, 42, 43, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chan et al 5100667.

The rejection of record is maintained except that the 5% polymeric is seen as obvious-examples show 6% and 0. as above the claimed composition is met; methylene chloridesolvent for example at example (col.6).

Applicant's arguments filed 2/10/04 have been fully considered but they are not persuasive. Applicant requests rejoinder; however the process is still seen as independent from the composition; the composition can be made by other processes- Kishino's or Chan's for example, and thus this process, not searched, would constitute and added burden, to so consider Kishino is seen as meeting the composition, as does Chan, in cotrast to applicants' arguments that in effect, the intermediate stages are not anticipated, are not persuasive.

Claims 32, 34-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kishino et al 4150155 and Chan 5100667.

The prior art is well aware of acephate and similar active insecticidale granule and extruded compositions, with high concentrations 30-95+%, of acephate, with or without added actives, and including processing aids and solvents capable of dissolving the active, the lubricant, and/or other adjuvants, and water, in residual amounts. These are exemplified by Kishino and Chan at the time of the invention, it would be obvious to one of ordinary skill in the art desiring to utilize a granular Acephate compositions, to

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prepare those as known in the art, with specific ingredients shown to be useful in preparation, as present in minimum amounts following preparation, in order to maximize the amount of active.

The selection of each ingredient and amount thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature and amount of each ingredient to optimize the effects desired.

There is no unusual and/or unexpected results obtained since the prior art is well aware of the use of the required amounts of processing ingredients, and the use of such ingredients for the purposes for which they are known is not a basis for patentability.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the combination of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, enhanced, and prolonged, or synergistic effects, and the use of ingredients for the function for which they are known to be used is not a basis for patentability.

The instant invention provides well known old art recognized compounds, with well-known art recognized effects, applied by well known art recognized methods to achieve control over pests.

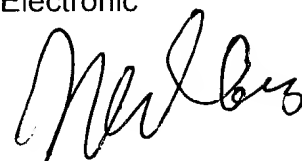
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We note that only residual amounts of specific adjuvants or processing ingredients, but not active, is claimed; fullers or other actives in large amounts, would thus put this composition in the realm of the references cited by applicant, as for example, cannelongo, cummings original acephate low % granules and pellets. Acephate % should be claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on T-F from 7:00a.m to 5:30p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/tgd

May 18, 2004

NEIL S. LEVY
PRIMARY EXAMINER